

**Lind, Denise R COL USARMY (US)**

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**From:** Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA  
(b)(6)  
**Sent:** Friday, June 08, 2012 8:52 AM  
**To:** David Coombs; Lind, Denise R COL USARMY (US); Williams, Patricia A CIV (US); Jefferson, Dashawn MSG USARMY (US)  
**Cc:** Hurley, Thomas F MAJ USARMY (US); Tooman, Joshua J CPT USARMY (US); Fein, Ashden MAJ USARMY (US); Overgaard, Angel M CPT USARMY (US); Whyte, Jeffrey H CPT USARMY (US); von Elten, Alexander S. CPT USA JFHQ-NCR/MDW SJA  
**Subject:** RE: Court's Questions (UNCLASSIFIED)

Classification: UNCLASSIFIED  
Caveats: NONE

Your Honor - A very brief reply to the Legislative History portion of the Defense Response to the Court's Questions:

As stated by the Government during oral argument, the 1984 legislative history is very clear that "exceeding authorized access" on a computer is not restricted to "breaking" or "bypassing some technical restriction." The United States quoted this passage verbatim:

"It is not difficult to envision an employee or other individual who, while authorized to use a particular computer in one department, briefly exceeds his authorized access and peruses data belonging to the department that he is not supposed to look at."

S. Rep. No. 99 432 at 2485.

Additionally, the definition of "exceeds authorized access" begins by stating "exceeds authorized access means to access a computer with authorization..." The government doesn't understand how that could be interpreted by the defense to mean "breaking" into a computer. The most important point from the section you referred the defense and government to during oral argument is that which states:

"[S]ection 1030(a)(1) would require proof that the individual knowingly used a computer without authority, or in excess of authority, for the purpose of obtaining classified information."

Again, 1030(a)(1) prohibits individuals from accessing a computer in excess of authority for the purpose of obtaining classified information.

Respectfully,

CPT Joe Morrow  
Trial Counsel  
U.S. Army Military District of Washington

(b)(6)

-- -Original Message- -

From: David Coombs (b)(6)  
Sent: Thursday, June 07, 2012 9:46 PM  
To: Lind, Denise R COL USARMY (US); Williams, Patricia CIV JFHQ-NCR/MDW SJA; Jefferson, Dashawn MSG USARMY (US)

APPELLATE EXHIBIT C<sub>XX</sub>XV11 (137)  
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Subject: Court's Questions

Ma'am,

The Court had several questions for the Defense during today's motions argument. In particular, the Court asked the Defense the following questions:

- 1) What is the Court's authority to dismiss the 1030 offenses?
- 2) How does the Defense interpret the passage quoted by the Court from the legislative history of section 1030?
- 3) Does the elements test require a Court to look at the elements as charged or simply the statutory elements?

The Defense has provided further responses in the Attachment (and has provided a case in support of the Court's authority to dismiss the 1030 offenses).

Best,

David

David E. Coombs, Esq.  
Law Office of David E. Coombs

(b) (6) [Redacted]

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